

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of Concrete
Products of New London, Inc. Against
Kandiyohi Power Cooperative

ISSUE DATE: May 2, 2007

DOCKET NO. E-118/C-07-180

ORDER DISMISSING COMPLAINT AND
IDENTIFYING RELEVANT STATUTES
AND RULES

PROCEDURAL HISTORY

On January 30, 2007, Concrete Products of New London, Inc. (Concrete Products or the customer) filed a formal complaint under Minn. Stat. § 216B.17 against its electric service provider, Kandiyohi Power Cooperative (Kandiyohi or the cooperative). Concrete Products claimed that Kandiyohi was charging it a discriminatory rate and had failed to provide adequate rate disclosure before the company had entered into an agreement for electric service.

On February 9, 2007, the Commission issued a notice that the complaint had been filed and solicited comments from interested persons. On February 20, 2007, the Minnesota Department of Commerce filed comments recommending that the Commission open an investigation into the rate disclosure issue.

Kandiyohi filed comments and a verified answer and counterclaim, arguing that the Commission had no jurisdiction over the complaint. The filings also denied the customer's claims on the merits and asked the Commission to order the customer to return cooperative electrical equipment it allegedly held and to pay amounts allegedly past due for electric service.

On February 27, 2007, the district court in Kandiyohi County granted Concrete Products' motion for a stay of proceedings in a lawsuit involving substantially the same facts and issues as this complaint, for purposes of permitting complainants to seek Commission review of the rate disclosure issue. The judge suggested that, even if the Commission did not resolve the complaint, it might be able to provide helpful background on how rate disclosure issues should be treated:

While the Court does not believe the PUC can make a decision on the amount of the charge, it does appear that the PUC may be able to resolve, or at least provide valuable insight, on the procedures that are to be applied when entering into a

service agreement. More specifically, whether the procedures should be more customer oriented (i.e. informed meeting of the minds on all issues), or whether they should be weighed more heavily in favor of the cooperative (i.e. automatic incorporation of all the by-laws, rates and policies into service contracts).¹

On April 19, 2007, after a final round of comments by the customer and the cooperative, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Factual Background

In January 2006, Concrete Products and Kandiyohi entered into an agreement under which the cooperative would extend three-phase electric service to the customer at its gravel pit outside the city of Hawick. Three-phase service is significantly more expensive than standard service. It requires specialized facilities and equipment, and customers who require three-phase service are usually required to contribute to its cost up-front, in the form of a Contribution in Aid of Construction. In this case that contribution was \$14,257.50, which the customer paid before service began.

In June 2006, installation was complete and service begun. The cooperative billed the customer some \$600 per month, the minimum monthly charge under the applicable rate schedule. The customer soon stopped paying, stating that (a) it was never informed there would be a minimum monthly charge; (b) it was affirmatively misled by the cooperative's statements regarding rates; (c) it would have self-generated instead of contracting for service if it had known of the minimum monthly charge; and (4) the structure of the rate discriminates against seasonal businesses like Concrete Products, who allegedly pay significantly more than customers with similar usage levels whose usage is spread more evenly throughout the year.

Concrete Products asked the Commission to require Kandiyohi to modify its rate schedule to end discrimination against seasonal customers and to require Kandiyohi to clearly disclose rates in the future. In the alternative, the customer sought the return of its \$14,257.20 Contribution in Aid of Construction and the minimum monthly charges it had already paid.

Kandiyohi denied that its rates were discriminatory, denied providing incomplete or misleading rate information to Concrete Products, and denied that the Commission had jurisdiction over any of the customer's claims.

The cooperative also filed a counterclaim asking the Commission to (a) require the customer to return a three-phase transformer and related equipment allegedly within its possession or, in the alternative, to pay Kandiyohi the \$20,000 value of these articles; (b) require the customer to pay

¹ *Concrete Products of New London, Inc. v. Kandiyohi Power Cooperative*, Kandiyohi County District Court File No. 34 CV 06 577.

an additional \$12,597.50 for construction and facilities costs the cooperative will not recover with the customer exiting the system; and (c) require the customer to pay any unpaid monthly charges incurred during the time it received service.

II. Legal Background

This complaint is brought under Minn. Stat. § 216B.17, which permits the governing body of any political subdivision, the Department of Commerce, another public utility, or any group of 50 customers, to file a complaint against any public utility. Since Concrete Products, an individual customer, fits none of these categories, the company asks the Commission to take up the complaint on its own motion, also authorized under § 216B.17, subd. 1.

Since the utility against whom the complaint is filed is a cooperative, the Commission's jurisdiction is limited to the issues of "service standards and practices."² The cooperative claims that neither issue raised by Concrete Products qualifies.

Procedurally, the statute permits the Commission to dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.³ The Commission generally frames this issue as whether there are "reasonable grounds to investigate the matter," the formulation employed in the general complaint statute⁴ and in the Commission's rules of practice and procedure.⁵

The Commission therefore makes two threshold determinations in complaint cases: whether it has jurisdiction and whether there are reasonable grounds to investigate.

III. Commission Action

On the first threshold issue – jurisdiction – the Commission concludes that this specific discriminatory rate claim probably relates too closely to ratemaking, and not closely enough to service standards and practices, to confer jurisdiction on the Commission. On the other hand, the Commission finds that the rate disclosure issue is at bottom a customer service issue and is therefore within the Commission's jurisdiction.

On the second threshold issue – whether there are reasonable grounds to investigate Concrete Products' claims – the Commission finds that there are not. This is a fact-intensive dispute between two individual parties. They are already in court, where the facts can be determined efficiently and appropriate relief granted. There is no evidence that this is a case in which systemic or recurring rate disclosure problems require Commission investigation.

² Minn. Stat. § 216B.17, subd. 6a.

³ Minn. Stat. § 216B.17, subd. 1.

⁴ Minn. Stat. § 216.14.

⁵ Minn. Rules 7829.1800, subp. 1.

Finally, the Commission is glad to provide the district court with the information it sought on how the Commission would proceed if it were required to resolve the complaint on the merits. The Commission would look to the requirements of its utility customer service rules, not as binding on the cooperative,⁶ but as a baseline measure of reasonableness and a starting point for analysis. Those rules are set forth in Minnesota Rules, Chapter 7820, with rate disclosure issues treated specifically at 7820.0200 B and 7820.3200.

Having found no reasonable grounds to investigate the complaint's allegations, the Commission will enter an order dismissing it.

ORDER

1. The Commission hereby dismisses the complaint filed by Concrete Products of New London, Inc.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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⁶ The exception is the Cold Weather Rule portion of those rules, which *is* binding on cooperatives in complaint proceedings. See Minn. Rules, 7820.1600, subp. 6a and *In the Matter of the Complaint of Energy Cents Coalition Against Beltrami Electric Cooperative*, Docket No. E-103/M-02-105, Order Requiring Compliance Filing (March 4, 2004).